

## **REMARKS**

In the amendments above, Claims 2 and 8 have been cancelled and Claims 1, 3-7 and 9-18 have been amended, to more particularly point out and distinctly claim Applicant's invention. Support for the amendment to Claim 1 may be found in Claim 2 as originally filed.

In the Office Action mailed May 17, 2007, Claim 1 was rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner maintains that the term "considerably" is a relative term which renders the claim indefinite. The Examiner further maintains that the term "slightly" in the claim is a relative term which renders the claim indefinite. The term "slightly" is not defined by the claim and the specification does not provide a standard for ascertaining the requisite degree and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 9 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner maintains that it is unclear what the phrase "the more density" is intended to describe, whether it is the actual material property of density or the casual use of the term to refer to the concept of volume.

Claim 14 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner maintains that it is unclear what the phrase "is manufactured in" refers to, whether it is a manufacturing process in which the contact platform is coated in a point-elastic material or whether the contact platform is made of a point-elastic material.

Claims 9 and 11 recited the limitation "the base." The Examiner maintains that there is insufficient antecedent basis for this limitation in the claim, since a base is not positively recited in the claims or in Claim 1 from which the claims depend.

Claim 16 recites the limitation "said feet." The Examiner maintains that there is insufficient antecedent basis for the limitation to the claim as "said feet" are not positively recited in the claim or Claim 1 from which the claim depends.

Claims 1, 3-11, and 13-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by Piaget et al., U.S. Patent No. 5,441,466 ("Piaget"). The Examiner maintains that Piaget describes the same invention as claimed including a double sided support with one upper and one lower side, one of which is considerably rigid and the other includes an inflatable flexible element, resting means for the support that allows users to carry out aerobic and cardio exercises and to work on their physical condition in general using the rigid side, wherein the inflatable element is slightly dished. The Examiner further maintains that the device taught by Piaget is inherently capable of allowing users to work on both areas of aerobic and cardio and the areas of balance proprioception, and coordination.

With regard to Claim 3, the Examiner maintains that Piaget shows the inflatable flexible element as being detachable and joined to the support by joining means. With regard to Claim 4, the Examiner maintains that Piaget shows the considerably rigid side as comprising a contact platform joined to the support by joining means. With regard to Claim 5, the Examiner maintains that Piaget shows the joining means as comprising a housing element which accommodates the inflatable flexible element. With regard to Claim 6, the Examiner maintains that the housing comprises a means to set the position of the inflatable flexible element and the joining means set the position of the inflatable flexible element. With regard to Claim 7, the Examiner maintains that the inflatable flexible element comprises means to set its position in the housing. With regard to Claim 8, the Examiner maintains that Piaget shows the flexible element as having a rectangular base. With regard to Claim 9, the Examiner maintains that Piaget shows the inflatable flexible element as comprising the thickest area of the base. With regard to Claim 10, the Examiner maintains that Piaget shows the flexible element as comprising supports on its base. With regard to Claim 11, the Examiner maintains that Piaget shows the inflatable flexible element as comprising a platform joined to the base.

With regard to Claim 13, the Examiner maintains that the support comprises means to fix elastic bands and the gap and supporting structure formed by the handles is sufficient for fixing and elastic band, and the device is inherently capable of supporting such elastic bands for exercises entailing toning up muscles, body building and rehabilitation. With regard to Claim 15, the Examiner maintains that Piaget shows the device comprising means to regulate its height. With regard to Claim 16, the Examiner maintains that Piaget shows the support comprises means to hold and handle the device. With regard to Claim 17, the Examiner maintains that Piaget shows the inflatable flexible element as comprising means to hold and handle it where the sides or base of the inflatable flexible element is sufficient for gripping by a user to hold and handle the device. With regard to Claim 18, the Examiner maintains that Piaget shows the flexible element comprising at least one valve to modify the pressure inside it.

Claims 1-2 and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by Chuang, U.S. Patent No. 5,765,921 ("Chuang"). The Examiner maintains that Chuang describes the same invention as claimed including a double sided support with one upper and one lower side, one of which is considerably rigid and the other includes an inflatable flexible element, resting means for the support that allow users to carry out aerobic and cardio exercises and to work on their physical condition in general using the considerably rigid side, wherein the inflatable flexible element is slightly dished and allows users to carry out balance, proprioception, and coordination exercises when standing on it. With regard to Claim 2, the Examiner maintains that Chuang shows that the resting means are feet that rotate around the support and around a considerably horizontal axis. With regard to Claim 15, the Examiner maintains that Chuang shows the support as comprising gaps to partially scramble the feet.

Claims 1, 4, and 14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Gallaro, U.S. Patent No. 4,516,768 ("Gallaro"). The Examiner maintained that Gallaro describes the same invention as claimed including a double sided support with one upper side and one lower side, one of which is considerably rigid, and the other includes an inflatable flexible element, resting means for the support that allows users to carry out exercises; the

inflatable element being slightly dished and allows users to carry out balance, proprioception, and coordination exercises while standing on it. With regard to Claim 4, the Examiner maintains that Gallaro describes the considerably rigid side as comprising a contact platform joined to the support by joining means. With regard to Claim 14, the Examiner maintains that Gallaro describes the contact platform as being manufactured in a point-elastic material that is capable of absorbing and restoring energy.

## **DISCUSSION**

### **35 U.S.C. § 112 Rejections**

Claims 1, 9, 11, 14, and 16 were rejected under 35 U.S.C. § 112, second paragraph. In response, Applicants have amended the claims to more particularly point out and distinctly claim Applicants' invention. Applicants respectfully request that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 112.

### **35 U.S.C. § 102(b) Rejections**

Applicants initially note that none of the references cited by the Examiner teach every element of the pending claims. Anticipation requires that each and every element of the claims be disclosed, either expressly or inherently, in a single prior art reference or embodied in a single prior art device or practice. See *In re Paulsen*, 30 F.3d 1475, 1478 (Fed. Cir. 1994); *Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of invention. See *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). A finding of anticipation “is not supportable if it is necessary to prove facts beyond those disclosed in the reference in order to meet the claim limitations.” *Id.* Absence of any claim element from the reference negates anticipation. See *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

Claims 1, 3-11, and 13-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by Piaget. Applicants note that Piaget refers to an exercise step supported on air

filled leg bellows which provide an air suspension system for relieving stress on the user's leg joints as well as offering height adjustment (column 2, lines 44 to 48). However, Piaget fails to teach an inflatable flexible element of a rectangular base with a dished upper side. According to Piaget, the air suspension system is made up of bellows which are cylindrical in shape and each of which comprise a pleated expandable body having a bottom end adapted to be received on a flat supporting surface and a top end which is also flat (column 2, line 66, to column 3, line 1, and figures 2 and 7). Applicants note that although the inflatable flexible element or bellow of figure 9 of Piaget has a rectangular base, nothing in the specification of Piaget suggests that the flexible element has a dished upper side on which the user stands to carry out balance. Rather, Piaget teaches an inflatable element with a flat bottom end adapted to be received on the floor.

The Examiner asserts that the device taught by Piaget is inherently capable of allowing users to work on both areas of aerobic and cardio and the areas of balance, proprioception and coordination. However, the device of Piaget relates to an exercise step having adjustable support legs that would allow only for aerobic stepping exercises. The leg bellow of Piaget provides an air suspension system which absorbs impact energy of a user stepping on a platform thereby reducing the inertial loads on the user's leg joints and which makes aerobic stepping exercises more comfortable and safer to perform (column 4, lines 25 to 28). Therefore, it can be clearly seen that Piaget is not teaching or suggesting an inflatable flexible element of a rectangular base with a dished upper side to carry out balance, proprioception, and coordination exercises.

Further, Applicants have amended Claim 1 to indicate that the resting means of the invention are feet that can rotate around the support and around a horizontal axis, an element not taught by Piaget. As Piaget does not teach every element of Claim 1, Piaget does not anticipate the subject invention. Applicants respectfully request that the Examiner withdraw the rejections of Claims 3-11 and 13-18, all of which depend from Claim 1.

Claims 1-2 and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by Chuang. Applicants note that Chuang refers to a pedal structure including a pair of bases, a pair of adjusting supports, each including an upper shaft holder portion for each receiving

one end of a shaft, a pair of pedals and a massage ball rotatably mounted on the shaft. According to Chuang, the shaft is fixed to the bases by means of shaft holder portions while the pedals as well as the massage ball can rotate about the shaft.

Applicants respectfully note that the Examiner has incorrectly asserted that Chuang shows that the pair of bases of the Chuang invention are feet that rotate around the pedals and around an axis. Although the device of Chuang has a pair of pedals which can rotate about the shaft, there is nothing in Chuang that suggests that the bases, which the Examiner has designated as feet, can rotate around the pedals or the shaft to allow the user to alternate between the upper side and the lower side of said pedals. Instead, the shaft is fixed to the bases by means of shaft holder portions and correspondent screws. Thus, Chuang fails to teach or suggest a device comprising feet that rotate about the pedals (the alleged support) and about the horizontal axis as taught by Claim 1 as currently amended. Further Chuang fails to teach an inflatable flexible element of a rectangular base. As Chuang does not teach every element of Claim 1, the subject invention is not anticipated by Chuang. Claims 2 and 12, which depend from Claim 1, should be found allowable.

Claims 1, 4, and 14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Gallaro. Gallaro refers to an exercising device including an inflatable toroidal member such as a tire tube, a substantially rigid platform disposed over and supported by the toroidal member, and foot treads positioned on the platform. Applicants note that Gallaro fails to teach an inflatable flexible element with a rectangular base and a dished upper side configuration as taught by Claim 1. The toroidal configuration of the inflatable flexible member confers an extremely small support surface to said element which would not be a suitable contact surface to practice balance exercises when standing on it. Thus, as is stated in the description, the toroidal inflatable flexible element acts as a resting means for supporting the substantially rigid platform disposed over it.

Applicants note that the toroidal inflatable element of Gallaro provides a flexible surface to eliminate hard impact on the feet of a jogger and avoids the disturbing pounding noise normally associated with such activities (column 2, lines 1 to 7). Thus, because of the presence of the flexible toroidal member, the jogger will jump onto a resilient surface, which

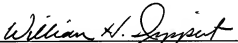
will absorb some of the jumping impact force. Gallaro does not teach such an inflatable flexible toroidal member as an element to carry out balance, proprioception, and coordination exercises. Further Gallaro fails to teach a device with feet that rotate about the support and about a horizontal axis to allows the user to alternate between the upper side and lower side of said support as taught by Claim 1. As Claim 1 is not anticipated by Gallaro, Claims 4 and 14, both of which depend from Claim 1, should also be found allowable.

In view of the comments above and the amendments to the claims, it should be clearly appreciated that the claims herein are patentable over Piaget, Chuang, and Gallaro. Accordingly, withdrawal of the rejections and allowance of the claims is believed proper.

Reconsideration and allowance of all the claims herein are respectfully requested.

Respectfully submitted,

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